000 themselves a large portion of our joint labor, leaving me with leisure to pursue this work; all the natives who have had confidence in me and have assisted me with their valuable evidence and explanations, among them Bakutu Bonifasi, Ali Ntefeji, Mpetsi, Esal'ey'olaka, [22] Ikanya, Bolongo Lokolo, B. Ekamba, Bosembu, Piosi Isia, and countless others all of whom I cannot mention, for the list would become too long.

I am deeply indebted to the Honorary Attorney General, Mr. A. Sohier. This eminent jurist was kind enough to look over the entire manuscript and to point out obscure or ambiguous passages and indicate places that called for added explanations or revisions in the text. Thus he has made a great contribution toward the final form of this work, and a good part of its merit is due to him. [23]

Chapter I

Preliminaries and Generalities

581 Marriage is comprised of a sexual aspect, an element of attachment or affection, and a utilitarian element. Only exceptionally is a union based on but one of these. This is true not only of marital unions, but also of extramarital relationships which are not transitory.

This law, which can be considered general and universal, holds true also for the Nkundó. Before embarking on a detailed study of marriage among these people, it would therefore be useful to see what form these aspects take among them.

Let us begin with the utilitarian aspects, which can be dealt with in brief. From that angle, the Nkundó's wife is to him the person who will attend to the satisfaction of his daily needs with respect to nourishment (cooking and farming) keep his hut clean and orderly, and raise his children. Thus, for him, she is a housewife and mother.

Cases of marriage for political or economic reasons occur, but they are the exceptions, so that we can leave them out of consideration.

581 Moral qualities are often involved in the choice of a wife. But strictly speaking, the marriage is not one of reason; the cause of it is more likely to be affection.

The affective and sexual aspects of the question require longer discussion.

Therefore this chapter is divided into two parts:

I. The emotional life

II. The sexual life of the Nkundó [24]

Part 1

The Emotional Life of the Nkundó

000 [Editor's Note: The Nkundó are capable of real affection. That affection takes varying forms and attains different degrees according to the nature of the persons in question. In successive articles, we will treat:

I. Affection among relatives

II. A special form of the latter: the creation of a Bolúmbó

III. Friendship

IV. Love between husband and wife]

Article I. Affection among Relatives

152 602 The Nkundó feel a deep affection toward members of their kin group. I am of the opinion that they love them as much, if not more, than most Europeans, but are not capable of as great a devotion. To understand this condition, one need only consider that affection is instinctive. Our people say: botéma nd'ikoma, "the heart is like a package," that is to say, it does not choose the object of its love, but rather the object presents itself spontaneously. (1) Devotion on the

1. Or lolango ale nsembe éy'otéma, "love is an innate, spontaneous product of the heart."

593x [882] If the whole family [26] suffers through the misbehaviour of adolescents, the latter will not be spared by the father. But the mother will often take their sides for, not belonging to her husband's family, she allows only her heart to speak. The familial-political organization of this people requires that fondness have its limits; otherwise it could lead to disorder and anarchy.

593x 855 It cannot be said of Nkundó parents, as one often reads about other peoples of the Congo, that they do not care for their children, who are self-sufficient and obliged to provide for their own needs from the age of six or seven. Our people are always feeding and even coddling their children; even when the latter are married they are always well received in their parents' home and lavishly treated. It is quite true that the young people spend much time in the forest looking for various kinds of food, but that is part of their games and amusements, a phase of their education, and at the same time their contribution to the maintenance of the household (a contribution which cannot be omitted from any serious education, and it is regrettable that it should be omitted by so many European families. (1)

1. Education will be dealt with more extensively in Chapter X, Article VIII.

593x 581 In the matter of marriage parents generally respect the feelings of their children. A father who is motivated by avarice and, above all, by the need for a certain sum of money or its equivalent, may sometimes let the voice of self-interest predominate over that of the heart.

It goes without saying that one may encounter aberrations of fatherly feeling, but such cases are exceedingly rare. (2)

2. For an example see Chapter II, Article XI, 3, B.

593x Though parents love their children without distinction and without consideration of their faults, vices, etc., they are not exempt from a certain amount of partiality a particular child [27] will

defended her husband. Finally, since they could not agree, Bompelɛ́ ordered his sister not to return to her husband, so that she could be married to another man. For he had decided to test the valor of Bonyeme by making war on him, and she could not see her husband taken prisoner by her own brother. Nevertheless, Bolúmbú remained determined and departed in haste. When she reached her husband she told him everything. In the meantime all the Boéndé and other Bombwanja clans were taking up arms. Enyuká, for his part, passed the news on to all Bonkoso villages, as well as their relatives by marriage, dependents, and Batswá. The various groups of combatants stationed themselves near the village of Bonganda in what is today the forest of [41] Boóngónjou, between the Lomeké and the present location of Besombó, Lofelɛ́, and Engónjó. The Boéndé army was taken unawares by the Bonkoso, who attacked and after furious combat routed them, leaving a number of dead on the field. Bonyeme proposed a peace. He took pride in not being surpassed in generosity. With a truly princely munificence he was not satisfied with only paying all the clans who had lost members but in addition sent Bompelɛ́ all that the latter needed in order to compensate Bombwanja groups for the loss of their members and, on top of this, brought him a whole fortune to complete Bolúmbú's bride price.

The Nkundó are well acquainted with cases of widows who, having reached middle age, take a solemn oath not to remarry or ever go near a man again. Among the stronger sex such cases are almost nonexistent. Cases of women who, when sick and dying wanted to remain near their husbands, cited later (Chap. VI, Art. II, 4) should be noted here, as well as preferences for monogamy (Chap. VII, Art. VI, VII).

Bearing in mind the explanation given at the outset, I think I can state that most marriages contracted by the Nkundó are love matches. Marriage for political reasons or for certain material advantages have certainly existed. And especially at the present time, there are parents who push their children into marriage for the sake of financial or social gains.

Our conclusions may not be accepted by a number of colonials. Yet I feel they are valid in the limited sense indicated here. Arguments

593x against the presence of love are based chiefly on the instability of
581 unions, the high frequency of divorce, infidelity, and polygamy --
objections which we shall examine in somewhat greater detail.

593x To judge the situation properly, we must first distinguish
562 between the sexes, which are not at all alike in this respect. Furthermore, among women [42] we must distinguish between those who are wives of polygamous men and those who are not.

Let us speak first of all of the men. They seem superior to the opposite sex in the matter of conjugal love, at least if we base our conclusions on their greater fidelity. Divorce is almost always
[586] caused by the wife. As a matter of fact, this is quite natural. The man marries at a fairly mature age and therefore becomes involved when he is well aware of what he is doing, while the girl most often becomes engaged before the age of discretion and is thus unable to choose according to her own heart.

595x On the other hand, the polygamous man's heart must be divided. As we will see suo loco, he has a special love for one of his wives. His love for the first one deepens, becomes more rational, more deliberate, whereas his love for his favorite would seem to be more a matter of emotion in the strict sense of the word. As to the others, he has usually chosen them of his own will and perhaps has even seduced them to the point of making them leave a previous husband. It would therefore seem unfair to deny the presence of some affection toward them.

562 But is the term "love" still applicable? According to the
593x European point of view, conjugal love is exclusive. Among the
152 Nkundó this does not seem to be the case. It has often been said
595x that the polygamist considers his wives, with one or two exceptions, as human capital, so many production machines. I would not deny that the harem constitutes human capital and a source of wealth, but in my opinion such a statement is much too extreme and absolute. In most cases a real affection for his wives must be attributed to the polygamist. I understand this affection to be a kind of love in reduced proportions. And I compare this situation -- mutatis mutandis -- to that of someone who loves several friends at the same time. It is

291 184 The nkásá is unknown beyond the Jwalé and the Luilaka. In that region the women tie a string (or a belt of beads) around themselves and attach a second piece of cloth to it.

291 Thus the male garment is a rudimentary sort of shorts, open on the sides, while female dress is much more open. In general the efufa is an appropriate protection of one's modesty, but it is inadequate in certain positions. (2)

[611] [196]

2. It may be interesting to note that etóo nsamányá, or just plain etóo, which is the term for a man's garment, also indicates the male line of descent, while the female line is often designated by the term nkásá (sometimes by the word jwómoto derived from bómoto, "woman"). Let us add that lonkundó jwá nkásá means "pure, flawless Lonkundo, not corrupted by foreign influences." This expression should be compared with the following phrases: langue maternel, moedertaal, "mother tongue," etc.

291 177 At present the nkásá is no longer worn except by a few elderly inhabitants of villages far from the main communication lines. Everywhere else the ancient mode of dress has been replaced by materials imported from Europe. The women wear at least a sangatúmbo, a kind of short skirt which falls from their loins at least to the middle of their thighs if not further. Middle-aged men in the interior have simply changed the material of their garment but not its form. The younger ones, on the contrary, have frankly adopted the European mode of dress.

291 581 [824] [837] A married woman is not allowed to enter the village of her relatives by marriage (bakiló) or appear before them [54] without supplementing her usual attire with one or more beleleke (banana leaves cut into fringes). The term bakiló must be understood as it is meant by the Nkundó; it excludes those with whom the wife may sometimes perform the sexual act and who are called "husbands" broadly speaking.

291 speaking. (1) Is this custom in some way related to modesty? The
581

1. See Chapter VI, Article VI.

[606] same question may be raised with respect to another strict rule of decorum which forbids a man to look his mother-in-law in the face. (2)

2. For details concerning this custom, see Chapter VI, Article V, 1.

It can readily be answered in the affirmative. (3)

3. Nevertheless, see Chapter X, Article II, 3.

784 The rule of decorum which forbids a man to sit down on a
516 seat where a woman is seated who is not his wife seems to me also to be dictated by sexual modesty. On the other hand, stepping over the seat under such circumstances has nothing whatever to do with this feeling. The purpose of this practice is to enable the person seated (regardless of sex) to avoid the evil repercussions of a charm or magic spell in his or her possession. (4)

4. Contrary to the explanation given by Jadot in Blancs et Noirs au Congo Belge (Whites and Blacks in the Belgian Congo], p. 90.

291 Is the native ashamed to show his nakedness? Let us beware
834 of answering this question in general terms. In order to have an idea of the situation which is sufficiently clear and precise, various cases and circumstances must be taken into account.

1) First of all it can be stated that in the normal course of daily living the Nkundó, men as well as women, do all they can to hide their genital organs. That is to say that basically they are

584 For his part, the young man gives her some small game animals
431 (especially the big rat called botómba, lemurs of the genus esénde, etc.) or fish. These gifts have no specific name. The man's gifts are simply called mpatɔ́ "gift sent"; the woman's are called botúmo, a term used for all presents given by a woman to her lover (see also Chapter VI, Article VII, 2). The verb used with this noun is tumba, "to make burn." Etymologically the two words are in no way related.

Sometimes the sweethearts give each other a secret mutual pledge of their desire to be married. This pledge is called bondengé or bonengé and consists particularly of a necklace of beads called bafomakongo (or, more rarely, bisengé or bisengéla). [103]

581 In choosing their wives, the men allow themselves to be motivated by the various factors which may influence them in this realm, such as physical or moral attractions. Wealth or social rank almost never play a part in determining the choice. Youth is easily carried away by physical attraction and passionate love. Men who are already more settled as well as the more sensible young men pay more attention to moral qualities, such as general conduct, submissiveness, goodness, gentleness, and especially diligence, careful attention to work, etc. In short, we find here the full range of individual variations that are encountered elsewhere, with the exception of marriages motivated by financial or political interests or by the degree of moral elevation that can be aroused by the Christian religion, such as pure devotion.

584 After a few days of courtship the girl lets her suitor know that if he really loves her he had better settle the matter and that consequently he must obtain her parents' consent. Meanwhile they have [836] already had intimate relations several times; therefore the moment of official negotiations should not be delayed.

586x 587 584 Seeking a wife who is already married is in no way different from the procedure we have just described, but a great deal of circumspection must be used so that the husband's suspicions will not be aroused. The exchange of the secret pledge we have mentioned occurs especially in this situation.

Once the divorce is completed, the woman falls in the same category as a single girl since she is free.

Seeking a future wife in an as yet unborn child or one that is very young will be discussed in a special section (Chapter IV, Article I). [105]

Chapter II

The Marriage Agreement

581 The marriage agreement (1) is primarily arranged by means of

1. These terms should be understood broadly, rather than in a strictly legal fashion. "The marriage agreement" here does not signify what is called "the marriage contract" in European law. This chapter deals with the various stages through which the condition of marriage is established among the Nkundó, and the various practices connected with this process. I have chosen this title in order to include all the multiplicity of essential and accessory elements comprised in the establishment of a marriage, as well as the various circumstances attendant upon it.

the payment of certain valuables through the agency (Article II). The first stage is the engagement (Article III). After dealing with it, we will describe the various payments subsequently made to the father, namely the walo (Article IV) and the bosóngo (Article IX), and to the mother (Article V), as well as the gifts (Article VI). Nkundó law also requires that the woman's clan pay certain valuables (Article VII). Finally, we will examine various rules and customs pertaining to the bride price: its acceptance (Article VIII) and the use to which it is ultimately put (Article X). The chapter ends with some general remarks (Article XI) and a few considerations on the attitude adopted toward the bride price (Article XII).

Article I. The Beginning of Negotiations

584 As we have seen at the end of the last chapter, the period of courtship is not long.

583× payment when all were gathered, the ndonga gave the woman's father 50 bakonga. Isia did not accept them because he did not think that his daughter's union with Eanga promised sufficient [156] stability. Therefore he asked the ndonga to keep the valuables as deposit until the day the union became strong. Events showed that Isia was right. Barely a few months later the pair broke up. The ndonga returned the valuables to Eanga's father, and the marriage never took place. In the native view, the walo had not been paid in this case, since the woman's father had not accepted the valuables. Therefore one could not say it was a real marriage.

583× 581 Though such cases are not common, this occurrence is not unique and shows how seriously the natives take the matter of marriage. Their attitude is far removed from the one attributed to them by certain writers. It is only that the freedom resulting from colonization destroys ancestral rules and sanctions without replacing them with at least their equivalent, bringing about a state of moral and social disorder in this sphere and giving free rein to lust.

583× Up to the present we have examined the three payments known as ikulɛ, ndanga, and walo, as well as the mother's valuables. Together with the beengo, they are grouped under the inclusive term jengɛ, which also covers other payments such as gifts of welcome to the fiancée, presents on the occasion of later visits, etc. In practice, therefore, the term includes all the payments except the final one, as yet to be discussed. Strictly speaking, it signifies payments made in order to obtain a wife, exclusive of subsequent payments.

Jengɛ is derived from the verb root eng, which means to make the marriage payments, to acquire a wife by means of them. It is impossible to translate these terms into a French or English equivalent, so we are forced to use expressions which are more or less inappropriate, such as "pay," "obtain," "acquire," "buy," "payment," "purchase," etc., and which have entirely different equivalents in Lonkundo. Therefore, never maintain before a Nkundɔ that his people buy [157] their wives; he will express great indignation at such a monstrosity. His word for "buy," is sɔmb, and in his mind it has nothing in common with eng or sɔng (see below).

589 X
581 2) A woman's family is not permitted to keep a double bride price for her during the lifetime of her husband -- that is, for the same marriage. If she is divorced, and her new husband pays the parents a bride price, they are required to return the bride price paid by the first husband. Thus, only a single bride price remains in their hands. This stipulation is probably intended to avoid a traffic in bride prices, something which is entirely illegal. Moreover, since the bride price constitutes the marriage, a double bride price in the situation indicated would make the woman the wife of two men at the same time, a situation which would be altogether contrary to the native concept of [174] marriage, despite their leniency with respect to certain types of concubinage. (1)

1. These will be discussed below, Chapter VI, Article VIII, 2.

One instance which took place around 1878-80 came close to infringing upon this law, though strictly speaking it did not violate it; it is rather non contra sed praeter legem. By his first wife, Wĕtsi de Likoli, Bakutu b'is'ɛ́y'olɔ́ngɔ́ of the Basɛ́k'Ɛ́longama (Besombɔ́) had a son, Bolɔ́njɔ́, and a daughter, Imote. The daughter married Lofalanga of Mpámá (Nkɔ́le), and with her bride price he procured a second wife, Mbɛ́lá of the Basɛ́ká Nkamba or Bofɛ́tola (Bonkoso). His son, Bolɔ́njɔ́, fell in love with her and took her away from his father who had grown fairly old and up to that time had neglected to provide him with a wife. Old Bakutu was furious and went so far as to threaten to kill his son. But the family intervened and judged the father to be in the wrong. The latter submitted to the family decision and finally quieted down. He yielded Mbɛ́lá and went even further. In order to spare his son malicious innuendoes and being shamed by comments made by other people, because he possessed a woman obtained in an abnormal fashion, he paid another bride price for Mbɛ́lá, consisting of 40 rings and 2 Batswá as bosɔ́ngo. As a result the Bofɛ́tola clan received two bride prices for the same woman, but they came from the same man and were given for a plausible reason. No grievances resulted; on the contrary, the payments had advantages. For both parties were satisfied: the Basɛ́ká

583x Nkamba were doubly enriched; their daughter was honored beyond
581 expectations and had acquired two nkita. The Basɛ́k'Élongama had the expense, but their renown and glory could only increase as a result. Furthermore, Mbɛ́lá's son thus acquired a very strong position in his mother's clan where his power would be greater because of his relationship to the double progeny of two of his mother's nkita.

A true exception to this rule is permitted in the case of [175] marriage by purchase (Chapter II, Article VII) and in case a woman takes refuge from her husband with another man (Chapter VIII, Article II, 3, (2)). But the rule is not the least weakened by these exceptions, for both types of union are entirely outside the usual rules and patterns, and it can even be said that they are not real marriages.

3) Right to the bride price

583x

A. Is the right to a bride price permanent? In other words, is a bride price acquired permently?

To answer this question we must anticipate what will be said later in this work. Therefore we will limit ourselves here to noting the conclusions from data which will be presented later in extenso. (1)

1. See Chapter VIII, Article III, 5, and Chapter IX, Article VII.

583x In case of divorce, restitution of valuables must be made by both
586x sides. On the contrary, if a spouse dies their acquisition remains permanent.

If restitution were not made in case of divorce, the divorcée would be prevented from remarrying. This seems to be a concession to human frailty. That is the only logical explanation I can think of for the existence of these two rules which are diametrically opposed to each other: permanent acquisition and acquisition only for the duration of the marriage. My explanation is supported by all other stipulations of Nkundó law which are pertinent to the matter.

Chapter III

The Various Forms of Marriage and Pseudo-marital Unions

581 Various forms of conjugal union exist in Nkundɔ́ law and practice, although not all of them reach the same degree of perfection, and certain ones are only known among some of the tribes under discussion.

The word "marriage" is translated into Lonkundo as lisála. It is used in the broad and universal sense as well as in the narrow, as is the verb from which it is derived, bál. This verb designates a sexual union per se, even if it is illicit. Thus the Nkundɔ́ say íy'áfé bale ô lisála, meaning that the relations between two people (adulterers or unmarried persons) are not isolated acts but part of a continuous relationship which takes the form of concubinage and therefore externally resembles marriage.

A man who marries, that is, the husband, is mbáli. But this is a general term, and it is not used to describe his relationship to his spouse; the word for "husband" in this specific sense is bɔ́me. The person who has paid the bride price is njengi (from the root -éng). He may be someone other than the mbáli, as the examination of marriage by inheritance (Article II) will show.

583x After returning briefly to the typical marriage arranged as we have described in the preceding chapter, we shall examine in detail the other forms of marital and pseudo-marital unions found among the Nkundɔ́. As described in the articles to follow, the Nkundɔ́ forms of union are:

I. Marriage by Nkumbɔ́
II. Marriage by inheritance
III. The marriage of a Bosɔ́lɔ́, which is a special case of II
IV. Replacement
V. The gift of a wife, or Boɔ́ngá
VI. Exchange
VII. Purchase

Another form of union is the marriage of a slave, but we will leave its discussion for Chapter VII (Article V).

428 587 ●581 Because of all these obvious differences, the Nkundó tend to consider this second type of union nonmarital. It resembles actual marriage only externally; in the final analysis, the difference is fundamental, since it has none of the specific properties of a marriage. Therefore such a union is not a marriage, but a continuous concubinage.

A man who cohabits in this manner with a woman for whom others have paid the bride price is often the object of humiliating allusions. He is treated as nkolasangó, "inheritance taker" (that is, of inherited women). If a woman involved in the type of union described quarrels with one who has been "bought" in the regular manner, the latter will sometimes clap her hands (-foma losáka) to indicate her superiority. That is why such a woman is sometimes called wálr ôâ fomalosáka in contrast to the other. [195]

[197] Present-day circumstances make all this even more clearly apparent. Nowadays, even pagan natives almost everywhere are aware of the intransigence of the Catholic Church on the question of the indissolubility of a marriage which has been effected through the religious ceremony. For this reason the "masters" of a woman who is legally theirs but who is actually living with another man in the manner described, will not permit her to enter into a religious marriage with this man unless he pays the bride price.

Therefore we may consider the type of union described above a concubinage which does not satisfy the moral conditions for a true marital union. As to the first type of marriage by inheritance, namely a union with a close relative of the deceased, the question is more complicated; but it is my opinion that such a marriage is valid from the moral standpoint. I hope, however, that in order to attain greater certainty on this point, others will re-examine the case in the light of the various aspects of the solution that have been presented.

The following historic case pertaining to individuals whose genealogy appears below will illustrate the preceding discussion:

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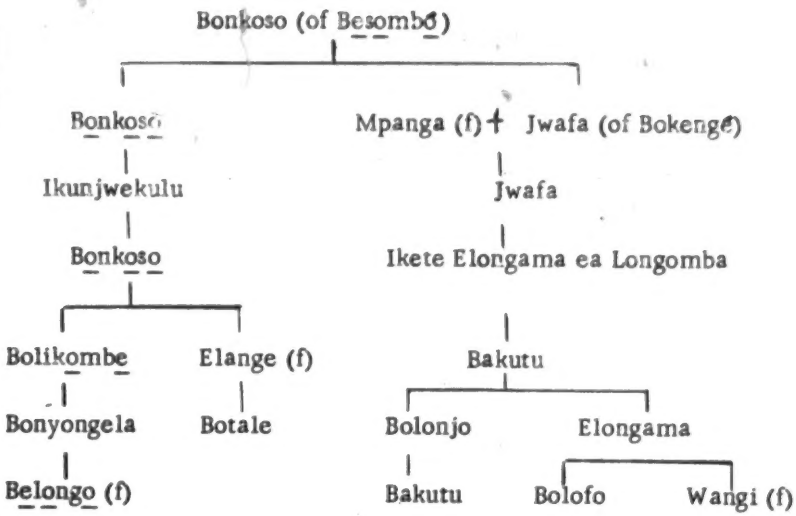

Elongama (the younger) married Ikókó of Bongíli, daughter of Bolékélá wǎ Nkunja and Tómpénda. After his death, his widow was taken as inheritance [196] by Bonyongela, to whom she gave a daughter, Belóngó. Bakutu (the younger) and his first cousin Bolófo were the ones who disposed of the daughter's bride price and were responsible for the marriage palavers; her father, Bonyongela, (since deceased) and his brother, Bonkoso, were not. Out of kindness, Bonyongela was given 18 rings. Bolófo added the other 30 to his sister Wǎngi's bride price to obtain his wife Iónggó (of Likolí, now deceased). After x number of years, Ikókó left Bonyongela for Botálé, a sister's son who, being a close relative, gave no nsǎnsangó. That which had been paid by Bonyongela was returned to him by Bakutu, since the union was broken. Five years later, Ikókó left Botálé with whom she was dissatisfied because he was lazy and did not bring her enough game, clothing, etc. She went to live with Ilumbé of Ngombe Mbálanga (Bongfli), who was a distant maternal relative and therefore gave the prescribed nsásangó.

Another instance turned up recently (May, 1933). One of our Christians, Babolá Michel of Ianda (Bonkoso) wanted to take a wife.

428 He had set his heart on Bolúmbú, daughter of Ntando Éy'ílengu of
587 Bofalambóka. Upon the death of Bolúmbú's husband, Esalé éâ
581 Lonkongá, (in 1926), she had been asked for by Bombóngo, a distant relative of Esalé. Proceeding in the customary fashion, Bombóngo had made his request through the medium of his elder brother Engambí and had paid a bompángá of 4 bakonga and 20 francs. In the meantime, Babolá reached adulthood; he left our school and returned to his native village. Being a true nephew of Esalé éâ Lonkongá, he had a direct right over this woman, who left Bombóngo. Since the latter protested, however, the priest was faced with a moral problem; the question was whether or not there was a real marriage between Bombóngo and Bolúmbú. If there were, there would be no question of a marriage between Babolá and Bolúmbú, since the Church could not break a valid marriage between Christians. I have said above that a union of the sort involved in this case is not, in Nkundo eyes, a typical marriage. However, I wanted to have every assurance and to be as certain as possible. To that end, I went to Bonjoku at the time of the tax collection. I found many men gathered there. I raised the question of marriage by inheritance. The discussion ended on the unanimous expression of the opinion that in the instance involved nothing opposed the new marriage. The men gathered there added that all similar cases are rather a sort of concubinage accepted by ancestral law, but lacking all characteristics of a true marriage.

In order to avoid the many disadvantages inherent in this second form of marriage by inheritance, the husband, if he has any wealth, will do everything he can to collect the valuables needed for the bride price and pay his father-in-law. The latter will use the bride price to reimburse the heir. By making this payment, which is handed over through a new ndonga designated by him, the husband obtains complete possession of the woman. The marriage by inheritance than changes into a marriage by nkumbó. The besangójwá which the husband had previously given the heir must be returned, and the heir's ties with the woman are broken by these formalities.

[579] It sometimes happens that the heir takes a very dim view of this new payment and takes offense. In the past a war, through illegal, could result -- after which, as always, the matter was settled just the same.

428 587 581 On the other hand, it also happens sometimes, and even quite often, that although the woman loves her "husband" (in the improper sense) she does not want any change. At heart she remains attached to the kin of her deceased husband, through her love for him or because of her affection for his family, who have always treated her well. It is not unusual for the common-law husband to encounter unalterable opposition to a regular marriage. The woman may [198] even take such offense at the proposal that she will leave the man for a close relative of the deceased. [578]

In this type of situation another sort of development may also occur, although it is quite rare. For example, there is the case of Lowâka, daughter of Bompɔ́kɔ́ of Bontole. After the death of her husband, Botúna of the Baséka Ilɔ́ka (Lofelɛ́), she was taken in marriage by one of his relatives, Nsenge, who gave the prescribed besangɔ́jwá to Imomo of Bofalambɔ́ka, Botúna's bonankáná. After a certain time Imomo, who had had a slight palaver with Nsenge, did not want the situation to continue. He demanded a regular marriage so that he could make use of his rights to Lowâka's bride price. Nsenge agreed and paid 60 bakonga to the woman's parents, who reimbursed Imomo. Imomo returned the besangɔ́jwá he had received, and thus Lowâka became the true wife of Nsenge.

One can see that the gamut of individual variations comes into play here, depending on the temperament and the feelings of the persons involved. But the most common practice is for the widow to remain attached to the family of the deceased or to remarry in the prescribed fashion.

In the latter case the widow goes to a man who is not related to the deceased, either immediately after mourning or after a period of conjugal life with the heir. The latter is entitled to a reimbursement of the bride price. The new husband must make all the customary payments through the medium of his own ndonga, exactly as he would for a first marriage by nkumbɔ́. Consequently, this union is not considered a "marriage by inheritance," with which it has nothing in common.

428 587 431 In any marriage by inheritance -- that is, where no bride price payment is involved -- the husband, whether he be the heir or

583x 184 152 According to the native view, a man must take this woman home for the sake of his honor. If he did not do so, he would become the butt of malicious comments and scorn on the part of all, both men and women. He would be considered a coward, just as in European "cultured" society a man is considered a coward if he does not pick up the glove thrown down by his adversary.

The rejected woman's hatred for her husband is transformed into a love for the man who has been similarly hurt by her rival. The joint misfortune of the pair creates a mutual feeling of affection. The woman is accepted as wife and is thus saved from dishonor. The man, on his part, feels affection for the woman who offers him her heart and preserves his good name. Harmony is at last established among all four of them, the two men arrange the matter of bride price in the way we have described, and then they live in peace without any enmity toward one another.

583x 581 184 This way of handling the situation is very strange to us, because it is indefensible from the point of view of a sound philosophy and of Catholic morality. But it seems normal to the natives. The pagan conscience has no trouble coming to terms with it, since no pagan law explicitly prohibits such behavior. Everyone comes to an agreement in the end, and that is all their conscience requires. Everything considered, there is no infraction of the rights of any individual, and since the native mentality is not concerned with morality as we conceive of it, this solution seems altogether natural to them.

Nevertheless, the ethnic groups who do not practice this true exchange in no way approve of it. Not that they fail to understand the psychology underlying this practice; on the contrary, if the situation arises they accept it. But they condemn [218] the legal procedure. They require that the two marriages be broken in the regular fashion and that two new marriages be contracted. That is, they demand the restitution and payment of the bride prices through the ndonga and through the respective parents of the women. For them therefore an exchange is not a true marriage, but a sort of sale and purchase. Also, from their point of view, the women who have been exchanged are slaves and not wives, because they live with their

583 men although their first marriage has not been broken and no new
581 marriage agreement has been concluded.
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[114] The data given above provides no confirmation in the Nkundó tribes under study of the statement made by Engels "Les Wangata [The Wangata]," Revue congolaise, 1910, p. 35) that among the Wangata "her husband can exchange her . . . she can make no protest." (1)

1. The Ekonda apply the term lienjɛ only to an exchange of daughters or sisters. They have a specific term: mpéngó. Note, by the way, that certain Mbólé tribes who practice a true wife exchange designate it by the same name: impéngó.

Article VII. Purchase

432 The purchase of women is not practiced by the Nkundó tribes
562 under discussion here nor even by the Bombwanja. The practice is to
580 be found only among the Elíngɛ. What is involved is not a marriage by means of a bride price but a real purchase; that is, a man buys a woman from her husband for a certain sum. He does not go through the woman's parents, as in an ordinary marriage by bride-price payment, but addresses himself directly to the husband.

In general it is the woman who makes the proposal that a man buy her in this manner. Sometimes a man wants to take a woman and
[121] first comes to an agreement with her. Before the Europeans arrived such a situation generally led to a war between clans or villages. After an armistice the palaver was settled, and the [219] purchaser
[117] paid the husband. Nowadays, since the Nkundó no longer dare to fight because of the legal sanctions that inevitably follow, when a woman abandons her husband for another man who wants to buy her, the parties involved bring the palaver before the judges. As the woman wants only her new husband, and as, on the other hand, war and the punishment of women have been abolished, the first husband has no

432 583 174 If we examine the data on the geographical distribution of this custom in relation to the ethnic nature of the practicing tribes, we are led to assume that it is not of Nkundó origin. The tribes that do not practice it do not approve of it among their neighbors; rather they hold them in contempt because of it, since for them a purchased woman is a slave. Thus they make fun of them saying, "They sell their women like slaves or goats." Could this be evidence that the Ntómbé-Bolénge are not pure Nkundó, or that they have been subjected to foreign influences? Would the same be true of the riverain tribes who practice the purchase of women?

Article VIII. General Conclusions

581 Having analyzed in detail the various forms of marriage and pseudo-marital unions among the Nkundó, we must now make a synthesis.

Certain kinds of unions are considered legitimate marriages by the Nkundó although they differ to some degree from the standard marriage because they are adapted to special circumstances. Among these are a widow's marriage with the heir of the deceased and a marriage by replacement after a divorce. As for ourselves, we can go along with native opinion, for when these unions are concluded in the normal fashion they involve nothing which is contrary to our conception of a valid marriage. (1)

> 1. This is true of a replacement after divorce only when the dissolution of the previous marriage is legitimate and valid in every respect.

Other types of union, on the other hand, are not considered by the Nkundó [223] to correspond, or only very imperfectly, to their idea of a regular marriage. The union of a widow with a distant relative of the deceased is only a sort of legitimate concubinage. The offer of a wife as security, the exchange or purchase of women, are considered as absolutely inferior forms of union. Therefore it is better to designate these by the term "pseudo-marital unions." For although they are accepted as legitimate by the tribes among

58/ which they are practiced, they seem to be tolerated rather than approved.

Thus there is room for action on the part of the native courts against these very inferior forms of union, and in fact such action is favored in the text of the Recueil à l'usage des Donctionnaires et des Agents du service territorial du Congo belge [A Collection for the Use of Officials and Agents of the Territorial Service of the Belgian Congo], (1930 edition, p. 375).

In the lines we shall devote to an examination of the nature of Nkundó marriage, we may therefore clearly exclude these pseudo-marital unions.

Article IX. The Nature of Nkundó Marriage

Having come to this point in our study, we must make a synthesis of the principal conclusions provided by our analysis thus far and try to deduce from it an idea of the essence of Nkundó marriage.

In Bantu ethnology marriage is defined more or less as "a bond between two persons of opposite sex which creates a particular social status and economic position for the spouses and gives legitimacy to their progeny." (1) This definition is quite different from the philo-

1. See Recommandations pour l'étude de la famille [Recommendations for the Study of the Family], published by l'Institut international pour l'étude des langues et civilisations africaines [The International Institute for the Study of African Languages and Cultures].

sophical one, which is narrower in requiring a firm contract between man and wife for a mutual handing over of exclusive rights over the body in relation to the acts of procreation.

In what respects does Nkundó marriage conform to or [224] disagree with these definitions? Or rather, what definition should we

581 give of Nkundó marriage, and what is its legal nature? First let us briefly recall certain facts essential to the problem by adding some observations which will appear in the pages to follow but which are indispensable here if we are to obtain a picture of the whole. Then we will try to deduce the legal basis of Nkundó marriage.

According to Nkundó law, the indispensable conditions necessary for a legitimate marriage are the following:

1) The payment of a bride price.
2) One or more qualified witnesses who act as intermediaries in this payment.

The stability of the marriage is weakened by the recognition of divorce, which is inevitable in a society like this one. But everything is done to limit its frequency -- the payment of bride price and dowry, opposition on the part of family authorities, etc. (1)

1. See Chapter VIII, Articles I and II.

The extent to which the spouses have exclusive rights to each other's bodies will be examined in Chapter VI. Let us say only that adultery is not considered lawful, although the Nkundó conception of it is quite different from our own that they permit some departures from the principle of fidelity and tolerate certain forms of license.

581/584 A very important question for our purpose is that of consent. But it is very difficult to examine because the natives relegate it to a place of secondary importance, while they stress the factor of the bride price. This should not surprise us because the material and palpable nature of the latter holds their attention more readily. (2)

2. This same observation may be made about impious Europeans with respect to legal questions and other matters.

Note first of all that for the Nkundó [225], a lack of consent never casts doubt on the validity of a marriage. One finds many women who refuse the husband for whom they are intended as replacements by invoking the fact that the bride price was not paid for them.

581 584 that is, that they did not consider themselves the contracting parties. But to my knowledge, their opposition is not considered to invalidate the marriage. I say "to my knowledge" because there is much confusion in the native mind on this question, and it is possible that later discoveries will show that the Nkundó attach a greater importance to consent than we perceive at the moment. As a matter of fact, the inclusion of a ceremony expressing consent in a normal marriage is an indication in that direction.

Let us now examine our data on the value of consent and its expression.

Except in an unusual case, which we are justified in leaving out of consideration in this synthesis since it does not influence our conclusions, there is always consent by the spouses in a standard marriage. Such a consent is first attained in private and then revealed to the parents, who give their approval. At the time of the first bride-price payment, the fiancée expresses her consent by a public and official act, while the husband shows his in accompanying his father in all the proceedings and in taking his intended to his home. In the eyes of the Nkundó that is entirely sufficient.

Another question arises in this connection. The consent of the couple is expressed at the time the ikulá is paid. And the real payment of the bride price occurs only later, without a renewal of consent. Can the expression of consent at the beginning, at the time of engagement, be considered sufficient, since it is virtually continuous? In my opinion there is no reason why it should not be.

581 584 587 In the case of a marriage by inheritance, the usual formalities of the expression of consent are omitted, because [226] no new bride price is paid. Nevertheless, we note that the heir must go and fetch the widow from her family and make a special payment. The Nkundó explain this action as a mark of respect toward the widow's family, but we may interpret it as an expression, adapted to the particular situation, of the new husband's wish to marry this woman. The woman's willingness to accompany the heir is really a manifestation of her consent to the union. This interpretation is confirmed by the legal requirement that another bekooli payment be made by each of the

581 deceased's relatives who wishes to marry the widow, while the bride
584 price contract remains unchanged. This payment, unlike the bride-
587 price agreement, does not come from the family; it is clearly a personal act of the man who wants to take the widow for his wife.

In the case of a replacement after divorce, the external expression of consent is more vague, since it is limited to the husband's overture's to his father-in-law on the one hand, and the fact that the woman goes with the husband, on the other. The same must be said of the inheritance of a bosólo (Chapter III, Article III). It would be contrary to reality, however, to conclude that because the form of the woman's consent is less prominent, such consent does not exist; with respect to these questions, their attitude is entirely different from ours. To be a replacement is considered a duty and accepted as such. Psychologically, the acceptance of this duty often involves consent; it does not exclude the presence of the will any more than the duty to submit to holy commandments, and to religious and civil laws. Even reverent fear, the fear of punishments, etc., does not prevent a free exercise of the will, although they do diminish it. Nevertheless, there are cases where fear or constraint can be so great as to remove freedom completely. [227]

581 With respect to unions before maturity (Chapter IV), the
584 question is even more difficult. Only the engagement is made in early childhood. The husband's consent is expressed in a manner which is entirely adequate. Since the union does not move from a tentative stage to a final one before the girl approaches puberty, she may be considered capable of giving her consent sufficiently to make a valid marriage, and she gives this consent in going to the home of her husband. Nevertheless, if we compare this expression of consent with those we have observed in the other types of union, it seems very much attentuated and greatly inferior to them.

We may therefore assume that in a general way and under ordinary circumstances freedom is safe and consent is expressed in an adequate fashion.

581 Having recapitulated these facts, let us try to define the legal nature of Nkundó marriage. In ecclesiastic law and in European civil law, a marriage is effected through the official exchange of

●581 mutual consent. For the Nkundó a marriage is effected through the official payment of a bride price, and to this payment is added the consent of the spouses, which is manifested more or less clearly depending on the type of union but which we have recognized as sufficient.

The bride-price and dowry payments comprise a contract between the families of the couple. This agreement between the families is considered by the Nkundó to constitute a marriage. For them the consent of the couple is secondary -- an attitude which is quite natural, considering the limitations of their analysis, as we have already seen. In European civil law, in addition to the legitimate exchange of consent which constitutes the marital union, there exists an explicit or tacit marriage agreement or contract by which financial questions are settled; it is only secondary to the marriage. The attitude expressed by this law is thus the very opposite of that taken by the Nkundó. [228]

Nevertheless, although our natives consider consent as altogether secondary in constituting a marriage, we can examine this question thoroughly and make a legal analysis of it; however, we must base our conclusions solely on facts observed.

The manifestation of the spouses' consent to a marriage is essentially a real contract from the legal standpoint and may be termed a conjugal pact: they express their desire to be united in marriage and do so in the manner prescribed by law. The fact that the Nkundó attribute a secondary importance to this contract does not destroy its reality.

Therefore, whatever the relative importance attached to them by the Nkundó, we can say with certainty that their marital union includes in reality two components: the bride-price agreement and the conjugal pact or expression of consent.

In ethical natural law marriage is a contract between the spouses: their consent is what constitutes the marriage. For the Nkundó, on the contrary -- at least according to their statements, explanations, etc. -- a man and woman become husband and wife through the payment of a certain portion of the bride price. If they

●581 made a thorough analysis of the question, they would find a categorical opposition between their system and the philosophical and legal nature of marriage. But a pact of consent does in fact exist -- though to our people it is secondary -- and it constitutes an integral element in the complex of acts and ceremonies which comprise their marriage agreement. Therefore their marriage conforms to the philosophical definition.

How should we picture the relationship between the conjugal pact and the bride-price agreement? I think that if we go to the legal basis of the matter, we can make the following statement: Nkundó spouses give their [229] consent to a union such as they conceive of it; they want to become husband and wife according to the practices which are prevalent in their community and the rules prescribed by their law. They express their willingness to conform to these rules and practices. In a marriage by nkumbó, the union is first tentative (the engagement) and then, after the payment of the walo, final. It is as if the spouses-to-be said, "We want to be husband and wife, and we will actually become husband and wife as soon as our respective families carry out the essential portion of the bride-price agreement." This agreement is a kind of necessary condition for the marriage contract but, in their limited analysis, the Nkundó explain it as the sole element constituting the marriage. From the legal standpoint the ultimate consent of the engaged pair depends on the subsequent fulfillment of the bride-price agreement. The situation is basically the same with respect to premature unions. For other forms of marriage we can adopt an identical interpretation, mutatis mutandis. Thus in the case of inheritance the heir and the widow add their consent to the pre-existing and continuing bride-price agreement. And the case of a replacement does not differ from the preceding instances.

It is possible to raise the objection that the Nkundó do not consider inheritance and replacement as new marriages, but rather as continuations of a union which persists in spite of a change in the spouses as individuals. The answer to that objection is implicit in the principles stated above. For, because of the obvious inadequacy of their analysis, they do not perceive the existence of a contract of

581 consent; they do not distinguish between this conjugal pact which changes and the bride-price agreement which alone persists. And since for them the bride-price agreement is essential, while the conjugal pact is secondary, they pay attention only to the former. Thus we can legitimately interpret their statements on the nature of unions by inheritance and by replacement [230] as referring to the bride-price contract. Thus the fact that each relative of the deceased who wishes to marry the widow must make an individual payment (bekooli), while the clan contract continues unchanged demonstrates the effective reality of the distinction between the familial bride-price agreement and the individual conjugal pact.

To summarize all these considerations: we think that we are justified in giving the following definition: Nkundó marriage is a conjugal contract between a man and a woman which is firm in itself and is linked to a bride-price agreement of prescribed nature and formalities between their families.

Therefore we can conclude that the essential nature of Nkundó marriage conforms to the definition of that institution in general as given in ethics and that it fulfills all the necessary conditions. (1)

1. I am very grateful to Attorney General A. Sohier for having, in a very specific way, drawn my attention to the legal aspect of this question and having thus suggested that I make a thorough investigation of it.

[231] Chapter IV. The Age of the Bride and Groom

582 The Nkundó may marry at any age. Their law contains no stipulation on the subject. Nevertheless, it was customary in the past for a girl to be married very young, while the boys could not take a wife until they had reached a really advanced age. Nowadays the time of marriage for the ever increasing number of girls and for the boys has been pushed forward almost universally. Let us examine the situation in detail, distinguishing between the sexes.

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[837]

D. Against the go-between (1) Nkundó law permits all sorts of invective, blows, and a good whipping. Formerly the most serious situation arose if a woman was called directly. In the past, if favored by circumstances (especially the social position of the families involved), certain of the more jealous and bold men caught the go-between and sold him as a slave. This punishment was entirely legitimate, even though the person for whom the go-between acted was the one primarily guilty and therefore the prisoner's family could attack him on that account. People cite the rather recent historic case of Bonkéké is Ilóko of Ikengo (Ntómbá, Wángatá), who sold a Botswa named Bompáte into slavery because the latter had brought a lover's gift to Wúfya, his favorite.

1. The Nkundó generally use go-betweens to tender invitations to women; these are frequently children between the ages of six and fourteen. The disastrous effect of such a practice on the bringing up of young people is easily understood. In some groups it has inflicted a real moral evil.

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E. Conclusion. In examining the various sanctions that Nkundó law provides against adulterers and their accomplices, we are struck by a noticeable difference among the cases. Although a wife has certain means to check her husband's misconduct, she is unquestionably less well armed than he. This is a logical consequence of the nature of Nkundó marriage. A husband defends his "property," whereas a wife is not an "owner." Furthermore, in this realm the requirements are stricter for a woman than for a man. Even in Europe the misconduct of a man is judged very differently than a woman's weakness, the latter being considered much more serious and shameful, even though -- in an absolute sense -- the two are equal. Finally, the system of polygamy plays a role, for it tends to weaken a wife's love and consequently her jealousy, so

694 that she becomes accustomed to her husband's relations with various
581 other women. Consequently, the reaction of the women in general
562 [325] against adultery is much weaker than that of the men. Moreover, because of this same system, a woman is much more exposed to weakness, and stronger sanctions are therefore necessary to insure her fidelity.

Finally, there is one last reason for considering a woman's misconduct as more serious. It is the danger of conception through adultery, with all the attendant consequences: risks for the pregnant woman, forced continence for the husband, etc. (1)

1. See no. 6 below as well as Chapter I, Part 2, Article IV, 3, and Chapter X, Article II, 3.

562 From the description of sanctions it is apparent that in spite
684 of the woman's inferior position, Nkundó law does not leave husbands the full and complete freedom which, according to certain writers, they are accorded among other peoples. Even if the means of repression available to the wife do not incontestably prove that the husband has an obligation of conjugal fidelity -- and the wife's legal status explains a great deal -- the fact remains that the ndonga as well as public opinion approve of even her violent reaction, proving that she is right and the husband wrong.

5. Public opinion

626 Public opinion is fairly lenient in relation to isolated in-
837 stances (yětsi, efongo). It clearly recognizes the error involved in infringing on the conjugal rights of another, but the error is attributed to human weakness. In the case of habit the situation is different; it is criticized frequently and severely. Habitual sinners
[192] are called efáfóká (from the verb fafoka, literally "to flutter" and figuratively "to flirt"), ebóngá or ebábóngá (from the verb bâbonga) or ebábóá (from bâboa) "to flutter, to be flighty and fickle." These epithets are applied primarily to women, who are more subject to this failing than men.

595 837 Some men are strict on this point, while others are more tolerant. Clearly, the technique of such men is most subtle. The more a wife's lover is permitted his freedom, the greater is the likelihood that other women, who prefer a young man passionately enamoured of them to their husband, will ask the polygamist to marry them. A [556] man who is sufficiently wealthy and influential can in this manner build up a harem from which he does not benefit physically but which assures him of a dominant social position.

This practice exists almost exclusively in conjunction with polygamy, but cases do occur among monogamists. And among more "civilized" tribes, such as the riverain people of the Lower Congo, a tendency in that direction is developing.

A request for concubinate made by a relative of the husband cannot be considered in the same category with the situation we have just examined. Such a request is more closely related to the request for an inherited wife (see Chapter III, Article II). The difference is obvious. The only thing the two situations have in common is the fact of legitimate cohabitation with another man's wife. One perceives this immediately upon comparing the two.

Article IX. The Family's Role in Marriage

596 ● 581 We have found that there are situations in which a woman is to some extent considered and treated as the wife not only of her husband, but also of certain of his relatives (Article VI). Moreover, we have seen in Chapter II the big role that the families play in the arrangement and continuation of their children's marriage. In discussing the question of the inheritance of wives, we have seen that the close relatives of the deceased have rights over the widow; one of them may marry her without any obligations toward the chief heir, and the new union is not a new marriage but a continuation of the previous marriage, which is not broken in spite of the first husband's death. A similar observation was made in relation to the practice of wife replacement (Chapter III, Article IV).

All this leads us to raise a question: To what extent does the family have collective rights over the wife? The following answer is

596 the one which seems to me to conform to reality.
581 A wife is acquired by means of a payment of valuables. These valuables belong chiefly and in the first instance to the one who has obtained them, either through the marriage of his daughter or sister or through his own efforts. In the last instance, the husband has more direct and personal rights over his wife. In the first instance, the closer the husband's kinship with the woman who has furnished the bride price through her marriage, the stronger are her rights over the wife. Other members of the family, however, also have secondary rights over her in proportion to their position. For they are bound to the husband by ties of kinship as descendants of the same ancestor and therefore share in varying degrees the duties and rights of the moral entity based on a community of blood. [340]

The family's participation in the husband's rights is based on the one hand on the economic nature of the marriage agreement and, on the other, on the solidarity of clan and family.

That is why a marriage continues despite death. From the personal point of view it is broken -- so that, for example, the woman may subsequently become another person's legitimate wife, which she could not have done during the first marriage, but from the financial and social point of view it continues to exist. The same is true for wife replacement. As to the relations of a younger brother with his elder brother's wife, they are permitted only under certain conditions which are clearly defined and limited. This fact proves that the younger brother may only very inaccurately be termed "husband." The woman does not have two husbands; she has only one: the elder brother. The relations with the younger brother are permitted not as a personal tie, but only because of the community of financial interests between the brothers, and the elder's pity for his unmarried junior.

Everything considered, and despite all, a woman has only one husband. Taking into account the explanations given and the description of the formalities through which certain persons may intervene in their relative's household and the extent to which they may do so, it is apparent that a husband's rights over his wife are basically personal and exclusive in spite of his recognized prerogative to yield these rights to others.

768 legal importance. The solutions given are the same whether the
672 cause of death be organic or criminal. If the latter is the case,
682 however, the murderer must pay an indemnity, which is given to the person who has been wronged, whether it be the woman's husband or her family; in any case he thus satisfies the requirements of justice.

A woman may be murdered while she is visiting one of her husband's kinswomen in accordance with her husband's wishes. In that case the sister-in-law's husband bears the responsibility. He must indemnify the victim's husband, and he himself is entitled to indemnification by the murderer. To simplify this procedure, the murderer can make his payment directly to the widower; justice is still safeguarded. But in no case does the indemnity go to the victim's father, for legally and economically it belongs to the husband, not to the father, who is indemnified through the funeral payments. [461]

Conclusions

1) A marital union is broken by death only for the person who
581 dies. For the one who remains alive, the dissolution is completed
768 only after other procedures. If the husband dies the widow remains the wife of the heirs and is free only after restitution of the bride price has been made. At the death of the wife the husband can marry a substitute.

A widow's remarriage without restitution of the bride price
581 (and therefore without a new bride price), or that of a widower
587 with a substitute, is considered a continuation of a pre-existing
768 union which has not been dissolved. This continuation is not absolute, however, Actually, it is perfect only in the case of the husband's death, in which case his kin group inherits all his rights and therefore also the rights to the wives he has acquired by means of his capital. On the other hand, if a widower is to continue the relationship after his wife's death, he must pay another bride price.

The difference between the two instances is due to the connection of the bride price with the "ownership" of a woman; she remains subject to it and as a result becomes legally the spouse

768 of her husband's heirs after his death. Only her own death takes
591 all power away from the bride price, which then becomes a purely
587 material value.

That is why the Nkundó expression "continuation of marriage" is ambiguous. For a widower the marriage continues from the atandpoint of ties between families. But from the legal point of view there is a new marriage, since he pays a new bride price for the substitute, and there is therefore an entirely new contract. Only for a widow does the marriage really continue, as long as there is no divorce between her and the deceased husband's heirs. The agreement retains all its validity in her person, whereas the husband's obligations are transferred to the heirs. There is only a change of the persons subject to the agreement, which is therefore in no way annulled. The question here is a substitution in the role of husband. [462]

The preceding should be understood as relating to the financial agreement or bride-price contract as we have explained in Chapter III, Article IX. For the conjugal pact or consent agreement is annulled by death, since an heir as well as a widow must interpose new acts in order effectively to become man and wife. What the Nkundó call the continuation of marriage is therefore only the continuation of the bride-price agreement between the families, and not of the conjugal pact between individuals.

It would be desirable to have a moralist thoroughly examine the philosophico-theological validity of the continuation of this marriage after the death of one of the parties. Personally I think that for the widow, and on condition that nothing else opposes it, it is valid. For consent is expressed by the man through the payment of the bekooli and by the woman through the act of accompanying the man as his wife.

768 2) From the economic standpoint, death does not change the situation that existed during life. The various bride-price valuables remain in the hands of the respective parties. The difference between the consequences of death and those of divorce are therefore very clearly delineated, as was indicated in the Conclusion of Chapter VIII, Article III.